

Madame Chair, members of the Committee:

My name is Lori Ballinger. I live at 519 Knight St. in Helena. I am speaking tonight as a private citizen and consumer although I am also an employee of the Department of Labor and Industry, Business Standards Division. I have been a prosecuting attorney for 15 professional and occupational licensing boards since 1998 and am currently the prosecuting attorney for the Montana State Board of Nursing.

One of the questions to be addressed is whether licensing boards are necessary. The answer to the question can be answered by very simple analysis. Does the activity or service offered pose a risk to the health, safety or welfare of the citizens of this state? If the answer is yes, then what mechanism is there to ensure public protection? In each case of a licensed profession or occupation, the Montana legislature has determined that a board should perform that function of regulation and oversight. For example, I have replaced a faucet in my kitchen. However, that does not mean that I am qualified to install the plumbing system in your home. If I do not have extensive knowledge plumbing, your house could fill with methane and you would die. The same is true of electrical work or the work performed in any other occupation or profession.

With all due respect, the Committee is asking the wrong question. Rather than question the need for boards, a structure I would point out used in all 50 states and the District of Columbia, the question should be are the boards being allowed to do the job that was entrusted to them by the legislature? Montana is not unique in wanting to protect its citizens from the unqualified, incompetent or unscrupulous practitioner. And, Montana does not require a unique solution to accomplish that end. We do not need to craft a new structure to accomplish the goal. I suggest that this committee focus on how the services are being delivered rather than scrapping the entire process.

The boards are not licensing agencies, merely established to process applications. The primary function of a board is to regulate the practice of the occupation or profession to minimize the risk to Montana citizens from unqualified, incompetent or unscrupulous individuals. Boards grant licenses after determining that the individual applicant meets the standards set by the board to protect the public. It is the regulation of the occupation or profession that is of key importance.

The members of the occupation or profession are the only individuals who have the requisite knowledge and technical expertise to determine what is or is not appropriate to the occupation or profession. While staff can provide the administrative, legal and clerical support necessary for the board to perform its duties, Montana does not have the ability to hire staff that are also licensed practitioners. Without actual knowledge of the intricacies of an occupation or profession and the relevant standards of practice on a national level, Montana citizens would be at risk. Montana would become a magnet for all the dregs of an occupation or profession that cannot practice in a state that regulates their licensees.

To illustrate, I reviewed a complaint filed against a nurse. In my review, I did not identify any significant violation of the statutes and rules that govern the practice of nursing. However, when the matter was reviewed by the screening panel, every nurse on the panel was appalled at the conduct. Without the knowledge and expertise of the licensees on the board, the department would not have known to proceed to discipline this individual for not practicing with the appropriate skill and competence.

The idea of an umbrella board has been proposed. An umbrella board might work on a limited basis with a few boards. But, again, when you look to the purpose of the boards and the rationale behind having members of the occupation or profession as board members, the practicality of an umbrella board becomes problematic. Either the board would need to have a number of members of each occupation or profession on the board or the board would lose the needed knowledge and expertise about the individual practice.

In previous discussions of this committee, the concept of "turf battles" has arisen. If you look at the statutes that create any board, you will find that the sole function of a board is to protect the public health, safety and welfare. Each board has the authority to regulate the practice of the occupation or profession with that sole purpose. Each board is granted the authority by the legislature to determine what constitutes the scope of practice of the profession. There may be some overlap in what one profession or occupation determines as part of their scope of practice but that does not create a "turf battle." As long as each board is regulating the practice of their own licensees, ensuring that they are practicing within the limitations of their license, the public is protected.

The only constituency for a board is the citizens of this state. The board does not operate to protect individual licensees. If you are being told that boards are engaged in turf battles, then you are being misled. Only a basic and fundamental misunderstanding of the boards could lead to such a statement.

In my opinion, the issue the committee should be examining is whether the current structure of the department is supporting the work of the boards in providing public protection. Has the reorganization of the division improved the services of the department is mandated to provide to the boards to accomplish its legislative mandate? Or, has the reorganization led to a loss of services, a loss of access to information, and a failure of the department to provide services mandated by the legislature to assist the boards? My suggestion is that the committee focus its attention on analyzing the current structure of the department to determine whether it is meeting its statutory mandate to provide the needed administrative, legal, and clerical services to the boards.